STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR W. DICKINSON, Plaintiff-Appellant,	UNPUBLISHED May 4, 2001
v	No. 216323 Macomb Circuit Court
MAYOR OF WARREN and CITY OF WARREN, Defendants-Appellees.	LC No. 98-000843-CK

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

Plaintiff Arthur W. Dickinson appeals as of right from the circuit court order granting defendants Mayor of Warren (the mayor) and City of Warren (the city) summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand for entry of an order granting summary disposition in favor of plaintiff.

In January 1987, the Warren City Council (the city council) voted to authorize an "agent of record" contract between plaintiff, an insurance agent, and the city, for insurance services. The duration of the contract was for "not less than one (1) year" and was automatically renewable each year unless, within thirty days following each one-year term, either party canceled the contract by written notice to the other. The record shows that the city council allowed the contract to automatically renew in the years 1988 through 1998. However, in January 1998, the mayor wrote plaintiff a letter stating that the letter was "written notification of the cancellation of [plaintiff's] exclusive 'Agent of Record' contract with the City of Warren."

Plaintiff filed a complaint seeking a declaratory judgment that the mayor lacked the authority to unilaterally cancel plaintiff's contract with the city and that because the city council never canceled his contract, the contract remained in force. Defendants filed a motion for summary disposition; plaintiff opposed the motion and requested judgment in his favor under MCR 2.116(I)(2). On a motion for reconsideration filed after the first judge, who had denied

defendants' motion for summary disposition, disqualified himself from the case, the court granted defendants' motion for summary disposition. The court found that the mayor did not personally cancel the contract, but was merely implementing a decision mandated by the city council's adoption of a purchasing ordinance in 1995 which, among other things, set forth a procedure requiring requests for proposals and providing for a review panel to make recommendations to the city council for the award of "engagements for professional or technical services" costing in excess of $10,000.

Plaintiff argues on appeal that the circuit court erred in granting summary disposition to defendants because under the Warren City Charter, only the city council has the authority to make and renew contracts on behalf of the city and that because the mayor's letter purporting to cancel plaintiff's contract with the city was sent without authorization or approval of the city council, it could not act to cancel that contract. Plaintiff further contends that because the city council has never taken action to cancel his contract, it remains in effect, and he is therefore entitled to judgment in his favor under MCR 2.116(I)(2).

This Court reviews a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). We review the pleadings, affidavits, depositions, and any other documentary evidence in a light most favorable to the nonmoving party. *Id.* "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.* A trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law. *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000). Statutory interpretation is also a question of law that we review de novo. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The rules of statutory construction apply with equal force to municipal ordinances. *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998).

Section 14.1 of the Warren City Charter provides as follows:

> (a) The power to authorize the making of contracts on behalf of the city is vested in the council and shall be exercised in accordance with the provisions of law.
>
> (b) All contracts, except as otherwise provided by ordinance in accordance with the provisions of section 14.2 hereof, shall be authorized by the council and shall be signed on behalf of the city by the mayor and clerk.

Nothing in the charter authorizes the mayor to terminate a contract that the city council has authorized, nor do defendants contend that the mayor has such authority. Rather, defendants maintain, and the circuit court concluded, that because § 2-342 of the purchasing ordinance adopted in 1995 requires that all professional or technical services to the city be awarded only upon completion of a "request for proposal" procedure, the mayor's letter informing plaintiff that his contract was terminated was simply notification of an action mandated by the city council's

adoption of the purchasing ordinance. In other words, according to defendants, the ordinance established a formal procedure for obtaining the city's insurance coverage that replaced plaintiff with a review panel.

Defendants' argument is not supported by the language of § 2-342 of the purchasing ordinance, which provides, in pertinent part, as follows:

> Engagements involving professional or technical services or services provided to residents and property owners in the city through written agreement with the city costing from in excess of ten thousand dollars ($10,000.00) shall be recommended for award to the city council by the review panel after requests for proposals have been issued and reviewed . . .

First, an insurance contract is not a "professional or technical service" within the meaning of the ordinance. Although the ordinance does not define "professional or technical service," under § 2-332, the ordinance defines "contractual services" to include, among other things, "insurance" as well as "professional and technical services," and "services provided to residents and property owners in the city." By distinguishing among these terms, the city recognized them as separate categories of contractual services. Because the term "insurance" is not included in the language of § 2-342, we conclude that that provision does not apply to contracts for insurance. See *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 298; 565 NW2d 650 (1997) (under the maxim *expressio usius est exclusio alterius*, the express mention in a statute of one thing implies the exclusion of other similar things).

Moreover, § 2-342(e) of the purchasing ordinance provides a specific exemption for contracts that existed at the time of the adoption of the ordinance:

> To provide for continuity of effort, or uniformity of results, the council may extend an existing contract within the parameters of the Warren City Charter for professional, technical or contractual services as defined herein.

As noted above, the city council allowed the contract with plaintiff to automatically renew through 1998.[1] Further, the record shows that in at least six regularly scheduled city council meetings held in the years after the city council enacted the purchasing ordinance, the council acted on plaintiff's recommendations as the city's "agent of record" for insurance contracts and coverage. This action by the city council demonstrates that it considered plaintiff's contract to be in effect and not "preempted" by the purchasing ordinance.

Because the city charter does not authorize the mayor to unilaterally cancel contracts without city council approval, and the city council never authorized the termination of plaintiff's "agent of record" contract with the city, the circuit court erred in granting summary disposition to defendants. Further, plaintiff is entitled to judgment in his favor because his contract with the

[1] Contrary to defendants' assertions, renewal of plaintiff's contract did not require affirmative action by the city council. Under the terms of the contract, neither party had to take any affirmative steps to renew plaintiff's contract on an annual basis.

city remains in force until the city council authorizes its termination. Therefore, summary disposition pursuant to MCR 2.116(I)(2) is appropriate.

Reversed and remanded for entry of summary disposition in favor of plaintiff. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Kurtis T. Wilder
/s/ Jeffrey G. Collins